

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TYRONE WHITE,

Case No. 06-CV-1343 (PJS/SER)

Petitioner,

ORDER

v.

LYNN DINGLE,

Respondent.

Jennifer M. Macaulay, MACAULAY LAW OFFICES, LTD., for petitioner.

Matthew Frank, MINNESOTA ATTORNEY GENERAL'S OFFICE, for
respondent.

This matter is before the Court on the parties' objections to the August 7, 2012 Report and Recommendation ("R&R") of Magistrate Judge Steven E. Rau. Judge Rau recommends that White's habeas petition under 28 U.S.C. § 2254 be dismissed on the merits and that a certificate of appealability ("COA") issue on only one of White's claims. The Court has conducted a de novo review of Judge Rau's long and painstakingly thorough R&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Based on that review, the Court agrees with Judge Rau's analysis and adopts the R&R. The Court is uncertain about whether a COA should issue on the particular ineffective-assistance claim identified by Judge Rau. But the Court will give White the benefit of the doubt and issue the COA as recommended. Only one matter merits comment.

White alleges that the racial composition of the grand jury that indicted him violated his rights under the Equal Protection Clause. To support his claim, White points to the fact that the juror-qualification questionnaire used in St. Louis County requests information about race. *See*

White Aff., July 11, 2011 Ex. D [ECF No. 82-3 at 12]. This question is required by Minn. Gen. R. Prac. 807(d), however, which requires the collection of basic demographic information such as age, race, gender, occupation, and educational level. The Eighth Circuit has previously rejected a claim that the use of this question made out a prima facie case of racial discrimination in the absence of evidence that “African-Americans were substantially underrepresented in jury pools over a significant period of time, or that the random juror selection process in Hennepin County is susceptible of abuse or not racially neutral.” *Miles v. Dosal*, 221 Fed. Appx. 499, 499-500 (8th Cir. 2007) (per curiam). White similarly offers no such evidence, and his Equal Protection claim regarding the racial composition of the grand jury is therefore without merit.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, the Court OVERRULES the parties’ objections [ECF Nos. 100, 102] and ADOPTS the August 7, 2012 R&R [Docket No. 94]. IT IS HEREBY ORDERED THAT:

1. Petitioner’s amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 [Docket No. 61] is DISMISSED WITH PREJUDICE AND ON THE MERITS.
2. A certificate of appealability is GRANTED as to the following issue: Was it contrary to, or an unreasonable application of, clearly established law as determined by the Supreme Court of the United States for the Minnesota Supreme

Court to reject petitioner's claim that his trial counsel was ineffective for failing to investigate the possible bias of juror Martha Dixon?

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 14, 2013

s/Patrick J. Schiltz
Patrick J. Schiltz
United States District Judge